

UNLAWFUL ADOPTION OF A CHILD

STUDY PLAN

Study Mandate

- During the 2014 General Assembly session, Senator Jeffrey L. McWaters introduced Senate Bill 411 which provides that any parent, guardian, or other person responsible for the care of a child who transfers physical custody of the child without following established adoption procedures, with the intent to do so permanently, is guilty of a Class 6 felony. The legislation would create an exception for kinship care arrangements for the purposes of school enrollment or other established legal procedures for transferring custody.
- Members of the Senate Courts of Justice Committee reviewed the bill and determined that further study would be appropriate. The Committee passed the bill by indefinitely and requested that the Commission on Youth study the provisions set forth in Senate Bill 411 and report findings and recommendations prior to the 2015 General Assembly Session.

Identified Issues

- The practice of re-homing occurs when adoptive parents decide to disrupt their adoption and find new adoptive parents or guardians for their adopted child. These arrangements may be made through websites like Yahoo, Craigslist, and Facebook. Without the involvement of the state or a private child-placing agency, there is no assurance that a background check or home study will be conducted, nor is there any other verification of the fitness of the new family. This practice is not explicitly prohibited by Virginia law.
 - Current law, § 18.2-371.1(A) of the Code of Virginia, creates a Class 4 felony for any parent, or guardian, either by willful act or omission, causes or permits serious injury to the child.
 - Additionally, under § 18.2-371.1(B), a parent or guardian whose willful act or omission in the care of a child was so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class 6 felony.
 - This section also provides an affirmative defense for parents who safely deliver a child to a hospital or rescue squad within the first 14 days of the child's life.
- A 2013 investigation by Reuters revealed an underground market of adoptive parents seeking new families for children they no longer wish to parent. The study found that children went to individuals with records of violence, severe untreated mental health needs, and who had already had children removed by the state. These children are extremely vulnerable and are at great risk for human trafficking and abuse.¹
- Such arrangements may also be in violation of the Interstate Compact on the Placement of Children (ICPC). ICPC is a uniform law in all 50 states. ICPC ensures the protection of children placed across state lines for foster care and adoption and ensures responsibility and communication among all parties involved until lawful termination. Procedures for the interstate and intercountry placement of children are intended to ensure that the proposed placement complies with state laws and regulations and is in the best interests of the child.²
- The Reuters study found that not all law enforcement officials were aware of ICPC. Although the ICPC has been adopted by each state, some states attach no penalties to violations of the pact. In others, violations are considered misdemeanors, but even then, officials almost never prosecute offenders.

¹ Twohey, M. (2013). The Child Exchange, Inside America's Underground Market for Adopted Children. *Reuters Investigates*.

² Virginia Department of Social Services. (2013). Interstate/Intercountry Placement of Children (ICPC). <http://www.dss.virginia.gov/family/icpc/index.cgi>. (April 2014).

- Virginia agencies must inform the court as to whether or not an interstate placement for the purpose of adoption was made in compliance with the ICPC.
- Pursuant to § 63.2-1000, interstate placements made in violation of ICPC are a violation of the laws respecting the placement of children of both the sending state and the receiving state. Violators are subject to punishment or penalties in both jurisdictions in accordance with their laws. As noted in *Virginia's Guide to the Interstate Compact for the Placement of Children*, imposition of penalties are rare, although there are several court decisions in which children placed illegally were ordered returned to the sending state.
- Article IV of § 63.2-1000 outlines the penalty for violating ICPC:
 - Violations may be punished or subjected to penalty in either jurisdiction in accordance with its laws; and
 - Any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.
- Illinois lawmakers have recently held a hearing on re-homing. Additionally, federal legislation has been introduced.^{3,4} State legislators in Colorado⁵ and Florida⁶ have also drafted bills aimed at preventing re-homing. The Wisconsin legislature recently passed legislation that adds a penalty of up to nine months in jail or up to \$10,000 in fines for anyone not licensed by the state to advertise a child over age one for adoption or any other custody transfer. Governor Scott Walker signed it into law on April 16, 2014.⁷

Study Activities

- Interview impacted stakeholders
 - Virginia Department of Social Services
 - Local Departments of Social Services
 - Virginia Supreme Court/Office of the Executive Secretary
 - Virginia League of Social Service Executives
 - Department of Criminal Justice Services
 - Human Trafficking Steering Committee
 - State and Local Law Enforcement Officials
 - Office of the Attorney General
 - Advocacy Organizations
 - Parent Representatives
 - Private Child Placing Agencies
 - CASA Representatives
 - Guardians Ad Litem
 - Association of Administrators of the Interstate Compact of the Placement of Children (AAICPC)
 - Local Family Assessment and Planning Teams (FAPT)
 - Commonwealth's Attorneys

³ Langevin, J. (2014). 113th Congress (2013 - 2014), H.R.3423. To ensure the safety and well-being of adopted children. <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:h.r.3423>: (April 2014).

⁴ Langevin, J. (2013). Rehoming Letter to WAM. <https://s3.amazonaws.com/s3.documentcloud.org/documents/812773/2013-10-29-re-homing-letter-to-wam.pdf>. (April 2014).

⁵ Conti, K. (2014). Concerning Making Acts Related to The Advertisement of Children for the Purposes of Transferring their Care to Others Trafficking in Children. [http://www.leg.state.co.us/clics/clics2014a/csl.nsf/fsbillcont2/8A17B9A7A273775687257C360075ED69/\\$FILE/1149_01.pdf](http://www.leg.state.co.us/clics/clics2014a/csl.nsf/fsbillcont2/8A17B9A7A273775687257C360075ED69/$FILE/1149_01.pdf). (April 2014).

⁶ Children, Families, and Elder Affairs Committee (2014). SB 498: Adoptions. <http://www.flsenate.gov/Session/Bill/2014/0498>. (April 2014).

⁷ Twohey, M. (2014). Wisconsin passes law to curb private custody transfers of children. <http://www.reuters.com/article/2014/04/16/us-wisconsin-adoption-idUSBREA3F1VS20140416>. (April 2014).

- Conduct extensive background and literature reviews
 - Other states' initiatives, legislation and policies
 - Best-practices protecting adopted children and re-homing prevention
- Review federal legislation/statutes
 - Interstate Compact on the Placement of Children (ICPC)
 - Child Abuse Prevention, Adoption, and Family Services Act
 - Adoption Assistance and Child Welfare Act
 - Adoption and Safe Families Act
 - Child Abuse, Domestic Violence, Adoption, and Family Services Act
 - Fostering Connections to Success and Increasing Adoptions Act
 - Safe and Timely Interstate Placement of Foster Children Act
 - Adoption Promotion Act
 - Intercountry Adoption Act
 - Review Virginia laws, regulations, and policies
- Adoption statutes and regulations
 - Child welfare regulations
 - Other related practices
- Analyze Virginia practices
 - Review local departments of social services policies and practices
 - Review Virginia's adoption policies
- Analyze other states' practices and procedures
 - National Conference of State Legislatures (NCSL)
 - State Policy Database from Casey Family Programs
 - Child Welfare League of America literature
- Develop findings and recommendations
 - Synthesize findings of literature review and interviews
 - Develop recommendations
- Solicit feedback on draft recommendations from impacted stakeholders
- Refine findings and recommendations
- Present findings and recommendations to the Commission on Youth
- Prepare final report